

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.**

WRIT PETITION NO. 6085 OF 2006.

Pravin Shrinivas Shetty & ors. ... Petitioners.

V/s.

Laxmibai Chimanseth Kudale

... Respondent.

Shri Shripad S. Murthy with Sapna D. Samant for the
petitioner.

Shri B.N. More i/b M/s Patil Gangavane for the
respondent.

CORAM : V.C.DAGA, J.

DATED : 13.9.2006.

P.C. :

. Heard learned Counsel for the parties.

Perused petition.

2. Petitioner has suffered concurrent findings
of fact whereby both the Courts below have
concurrently held that bonafide need of the landlord
has been established by the plaintiff. In the trial
of the suit, one Prabhakar Kudale, Power of Attorney
Holder of the plaintiff i.e. her son was examined
and he has made statement reading as under:

. I say that the suit premises are
reasonably and bonafide required for our
family members to use and occupation. I am
having no business and my mother's family is
a Joint Hindu Family, consists of 5 adult
members. That the grand son of the plaintiff
and son of me namely Milind & Rohan are
unemployed and he is jobless. I myself and
my mother are also jobless. The entire
family of the plaintiff is depend upon the
income of the running business of hotel to

earn our livelihood and thus, the suit premises are reasonably and bonafide required by members of our family."

On this material examination-in-chief there is hardly any cross-examination on the question of need at the instance of the petitioner-tenant. At the cost of repetition, I must mention that unemployment of the grand-son Milind has not been challenged in the cross-examination, with the result, evidence on the question of need has gone unchallenged. It is no doubt true that plaintiff was examined subsequent to the cross-examination of the said witness. At the most it can be said to be an irregularity. But, this by itself will not vitiate the judgment and decree. The defendant did not cross-examine the plaintiff with the result, entire evidence of the plaintiff went unchallenged.

3. At this juncture, it will not be out of place to mention that one of the petitioners, i.e. petitioner No.2 is staying in America, though his residential address is shown that of Pune so as to give a false picture to this Court that he is staying at Pune. So far as petitioner No.1 is concerned, he is in the employment. He is not expected to run business of hotel. Petitioner No.3 is a power of attorney holder, who is acting for the petitioner Nos.1 and 2. It is, thus, clear that none of the petitioners are running Hotel business in the suit premises. Both of them are affluent and

needs no premises. They shall not suffer any hardship if eviction decree is allowed to operate. At this stage, Learned Counsel for the respondent states that decree has also been executed and possession stands taken from the petitioners.

4. Thus, taking overall view of the matter, no case is made out to interfere with the impugned order. Petition is dismissed in limine with no order as to costs.

(V.C.DAGA,J.)